IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

SA.No. 1019 of 2001()

AS.5/1999 of SUB COURT,KATTAPPANA
OS.44/1997 of MUNSIFF COURT, PEERUMEDU
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APPELLANT: APPELLANT/ PLAINTIFF

V.M.ALEXANDER, S/O. MATHEW,
AGED 54, VAZHAYIL HOUSE,
SPRING VALLEY KARA,
PERIYAR, PEERMEDU TALUK.

BY ADV. SRI.P.SANTHALINGAM

RESPONDENTS: RESPONDENTS/ DEFENDANTS
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1. **STATE OF KERALA, REP.BY**
THE DISTRICT COLLECTOR, IDUKKI.

2. **THE EXECUTIVE ENGINEER,**
PUBLIC WORKS DEPARTMENTS (ROADS)
PINAVU P.O., IDUKKI.

3. **THE ASSISTANT ENGINEER,**
PUBLIC WORKS DEPARTMENT(ROADS),
PINAVU PO. IDUKKI.

BY GOVERNMENT PLEADER

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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M.SASIDHARAN NAMBIAR,J.

S.A .NO. 1019 OF 2001

Dated 11th October 2007

J U D G M E N T

Plaintiff in O.S.44/1997 on the file of Munsiff court, Peermade is the appellant. Respondents are defendants. Appellant instituted the suit seeking a decree for title and possession. Case of appellant is that plaint schedule property having an extent of 6.206 cents in survey No.165/1 and 208 of Periyar village belongs to him and is in possession and enjoyment, out of which 3.5 cents was purchased under sale deed dated 7/5/1979 and when he purchased the property it was enclosed by compound walls on all the boundaries and he constructed a bore well on the southern portion of the property in 1990 to make use of drawing water for house hold purposes and third respondent issued notice on 14/2/1994 directing him to remove the bore well contending that it is in the road puramboke in survey No.105/2. It was contended that that property is not a road puramboke and appellant's predecessors have been in exclusive

possession uninterruptedly since 1954 and K.K.Road was already widened and there is no necessity to widen the road further and therefore appellant has perfected title. A decree for declaration of title and possession of the property was sought. Respondents in the written statement contended that appellant had encroached into PWD puramboke land which is on the side of K.K.Road and unauthorisedly dug a bore well and notice was issued to remove the bore well and appellant has no right over the puramboke land and he has not perfected the title by adverse possession and suit is to be dismissed. Before the trial court Pws.1 and 2 were examined and Exts.A1 and A2 were marked. Learned Munsiff on the evidence dismissed the suit. It was challenged before Sub court, Kattappana in A.S.5/1999. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed appeal. It is challenged in the appeal.

2. Learned counsel appearing for appellant was heard.

3. Argument of learned counsel is that appellant and his predecessors have been in possession of the plaint schedule property from 1954 onwards and they have

been in possession of the property as it is in survey No.165/1 and not in survey No.105/88 which is Government land and therefore respondents have no title to the property. It was contended that even if it is a road puramboke land, title of the State has been lost by adverse possession as the appellant and his predecessors have been in possession of the property from 1954 and the decree and judgment of courts below are unsustainable. Learned counsel relied on the decision of apex court in **P.T.Munichikkanna Reddy and others v. Revamma and others (2007 (6) SCC 59**) and argued that adverse possession is a human rights problem and courts below should have upheld the plea of adverse possession.

4. Appellant can perfect adverse possession as against State, only after recognising that the property belongs to the State and establishing that he and his predecessors have been in possession of the property against State being the true owner. The contention of the appellant in the plaint as well as at the time of evidence is that plaint schedule property is not a Government land and he is the title holder and therefore respondents have no right to issue the notice. Appellant and his predecessors never recognised

the right of the Government. Without recognising the title of true owner, appellant is not entitled to claim adverse possession. The legal possession is settled by the Apex court in **T.Anjanappa Vs. Somalingappa (2006 (7) SCC 270)** and **Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and others (2004 SAR Civil 9)** In such circumstances, I do not find any substantial question of law involved in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.1019 OF 2001

11th October 2007

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